SERVICE DATE – JUNE 18, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 365X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN CHICAGO, COOK COUNTY, ILL.

Digest:[1] This decision allows Norfolk Southern Railway Company to discontinue its freight rail service over approximately 1.5 miles of rail line in Chicago, Ill., subject to standard employee protective conditions.

Decided: June 17, 2015

By petition filed on March 17, 2015, Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to discontinue service over an approximately 1.5-mile rail line, extending from milepost KN 4.0 to milepost KN 5.5 (the Line), which is located on NSR's LeMoyne Industrial Track in Chicago, Cook County, Ill. Notice of the exemption was served and published in the Federal Register on April 6, 2015 (80 Fed. Reg. 18,502).

No comments concerning the proposed discontinuance were filed. We are granting the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

The Line is the last mile and one-half of the LeMoyne Industrial Track, which is a 5.5-mile track extending from NSR's Ashland Avenue Yard past BNSF Railway Company's Corwith Yard. According to NSR, there are no stations on the Line.

NSR argues that the Line is a burden on NSR and interstate commerce, because the potential annual revenue that the Line's two remaining shippers could generate would be heavily outweighed by the costs of maintaining and operating the Line. NSR claims a base year normalized maintenance cost of $8,278 ($5,519 per track mile) and projects a forecast year normalized maintenance cost of $8,507 ($5,671 per track mile), which were based upon actual track maintenance costs and data. NSR states that the Line experienced a base year avoidable

---

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

loss from rail operations of $16,953, and it projects a forecast year avoidable loss from rail operations of $17,423.

NSR maintains that rail traffic on the Line has decreased by two-thirds over the past two years (from 2012 to 2014), and the current traffic volume is not anticipated to increase significantly. NSR states that it handled seven carloads, containing paraffin wax and petroleum lube oil, over the Line in the 12 months ending in September 2014. According to NSR, the Line serves two customers: Tower Oil (Tower) and Bagcraft Corporation of America (BCA).[2] NSR states that these two remaining shippers on the Line can use alternative modes (trucking and transload) for their transportation needs and that it has reason to believe both Tower and BCA regularly make use of trucks for shipping their products. Finally, NSR claims that there is no overhead traffic on the Line and that the low levels of on-line traffic make it unattractive to a potential short line operator.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of NSR's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. The Line's remaining shippers have neither opposed the proposed discontinuance nor indicated that they would be adversely affected by it. An exemption would minimize the administrative expense of the application process, expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings. 49 U.S.C. §§ 10101(2), (7), and (15). An exemption would also foster sound economic conditions in transportation and encourage honest and efficient management of railroads by more quickly permitting NSR to formally discontinue operations on a line that can only be operated at a loss. 49 U.S.C. §§ 10101(5) and (9). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

We also find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power.[3] As noted, no shippers filed comments regarding the

---

[2] NSR certifies that it has served a copy of its discontinuance petition for exemption on these two shippers.

[3] Because we find that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed discontinuance is limited in scope.

discontinuance, and the record indicates that viable transportation alternatives are available. Nevertheless, to ensure that the remaining shippers are informed of this proceeding and of our action here, we will direct NSR to serve a copy of this decision on Tower and BCA so that they receive it within five days of the service date of this decision, and to certify to the Board contemporaneously that it has done so.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose upon NSR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Line for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances.

Because there will be no salvage and no diversion of traffic, this action does not trigger the environmental review process.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by NSR of its operations over the above described line, subject to the employee protective conditions set forth in Oregon Short Line Railroad–Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

2. NSR is directed to serve a copy of this decision on the Line's existing shippers so that they receive it within five days after the service date of this decision, and to certify contemporaneously to the Board that it has done so.

3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by NSR and the Board by June 29, 2015, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at $1,600. See 49 C.F.R. § 1002.2(f)(25).

4. OFAs for subsidy and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "**Office of Proceedings, AB-OFA**."

5. Petitions to stay must be filed by June 29, 2015. Petitions to reopen must be filed by July 8, 2015.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on July 18, 2015.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.